

ORIGINAL

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	MM Docket No. 00-69
FM Broadcast Stations.)	RM-9850
(Cheboygan, Rogers City, Bear Lake, Bellaire,)	RM-9945
Rapid River, Manistique, Ludington, Walhalla)	RM-9946
and Onaway, Michigan))	

To: Assistant Chief, Audio Division
Media Bureau

PETITION FOR PARTIAL RECONSIDERATION

Fort Bend Broadcasting Company ("Fort Bend"), licensee of Station WCUZ(FM), Bear Lake, Michigan, by its attorneys, and pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby petitions for partial reconsideration of the Commission's *Memorandum Opinion and Order* ("MO&O") in the above-captioned proceeding.¹ The purpose of this petition for partial reconsideration is to request the substitution of fully spaced FM Channel 291A for the presently assigned grandfathered short spaced FM Channel 261A at Bear Lake as was proposed in this proceeding and the modification of the license of WCUZ to reflect operation on Channel 291A.

1. In the initial *Report and Order*,² the Commission denied a counterproposal originally filed by D&B Broadcasting LLC ("D&B"), Fort Bend's predecessor as licensee of

¹ DA 03-1224 (rel. April 30, 2003) ("MO&O"). The MO&O was published in the Federal Register on May 27, 2003. 68 Fed. Reg. 28805.

² 17 FCC Rcd 8799 (2002).

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WCUZ.³ In that counterproposal, D&B had proposed to delete Channel 261A at Bear Lake, Michigan and allot Channel 260C1 to Bellaire, Michigan. To avoid the loss of Bear Lake's sole transmission service, D&B proposed that fully spaced FM Channel 291A be allotted to Bear Lake as a "backfill" channel. The resulting arrangement of allotments would have substituted fully spaced FM Channel 291A for the presently assigned grandfathered short spaced FM Channel 261A at Bear Lake while adding Channel 260C1 at Bellaire.

2. The Commission initially denied the counterproposal on the ground that the reference coordinates for Channel 291A at Bear Lake were unsuitable as a transmitter site. Fort Bend petitioned for reconsideration of that decision. In the *MO&O*, the Commission agreed with Fort Bend that the proposed site for Channel 291A at Bear Lake is, in fact, a suitable transmitter site. However, the Commission denied the allotment of Channel 260C1 to Bellaire.⁴

3. Fort Bend requests reconsideration of the *MO&O* only insofar as it denied the substitution of Channel 291A for Channel 261A at Bear Lake. Channel 291A can be allotted to Bear Lake, Michigan at coordinates 44-17-37 North Latitude, 86-13-26 West Longitude in compliance with Section 73.207 of the Commission's Rules, provided that changes are made at Ludington, Michigan and Walhalla, Michigan as previously proposed. *See* Technical Exhibit. The Commission has already passed upon the suitability of this transmitter site. *See Honor, Michigan, et al.*, 18 FCC Rcd 8794 at footnote 4 (2002) The substitution of Channel 291A for Channel 261A at Bear Lake for use by WCUZ is in the public interest because it will eliminate a preexisting short spacing and allow WCUZ to increase its power and transmitter height to the equivalent of full Class A facilities. *See* Technical Exhibit.

³ WCUZ formerly operated under call sign WSRQ.

⁴ The Commission found that there was no reasonable assurance that a suitable transmitter site exists for a Channel 260C1 allotment at Bellaire. Fort Bend does not challenge that determination.

4. As discussed above and in the original counterproposal in this proceeding, in order to allot Channel 291A at Bear Lake, channel substitutions will have to be made at Ludington, Michigan and Walhalla, Michigan. Channel 254A can be substituted for Channel 292A at the current transmitter site of WKLA-FM, Ludington, Michigan. An Order to Show Cause has already been issued to Lake Michigan Broadcasting, Inc., licensee of WKLA-FM, for this change. Fort Bend reiterates its commitment to reimburse the licensee for the change according to the guidelines set forth in *Circleville, Ohio*, 8 F.C.C.2d 159 (1967). Channel 293A can be substituted for vacant Channel 255A at Walhalla, Michigan at the allotment reference coordinates. Channel spacing studies were included in the D&B counterproposal.

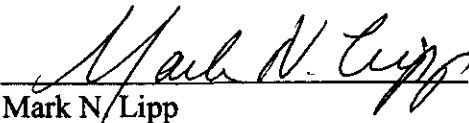
5. The Commission may make the substitution of Channel 291A for Channel 261A at Bear Lake in this proceeding since no other party expressed an interest for Channel 291A after notice to the public. See *Canton and Morristown, New York*, 15 FCC Rcd 13319 (2000); *Colonial Heights, Tennessee*, 15 FCC Rcd 195 (2000); *Ashton, Idaho and West Yellowstone, Montana*, 13 FCC Rcd 15575 (1998). Because comment on this channel substitution, as well as the changes at Ludington and Walhalla, has already been solicited, no purpose would be served by instituting another proceeding, and the public interest would be better served by the rapid introduction of improved service at Bear Lake than to delay while another proceeding is conducted.

6. Should the Commission substitute fully spaced FM Channel 291A for the presently assigned grandfathered short spaced FM Channel 261A at Bear Lake, Michigan and amend the license of Radio Station WCUZ(FM) to specify operation on the fully spaced channel. Fort Bend Broadcasting will promptly file an application for Construction Permit and will construct the newly authorized facility on FM Channel 291A.

WHEREFORE, for the foregoing reasons, Fort Bend respectfully requests that the Commission modify the FM Table of allotments to substitute Channel 291A for 261A at Bear Lake, Michigan, as proposed by Fort Bend for use by Station WCUZ.

Respectfully submitted,

FORT BEND BROADCASTING COMPANY

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Its Counsel

June 26, 2003

Fort Bend Broadcasting Company
1110 West William Cannon Drive
Austin, TX 78745

Petition for Partial Reconsideration
MM Docket 00-69

Engineering Statement

This firm has been retained by Fort Bend Broadcasting Company, ("FBC"), to prepare this Engineering Statement in support of its Petition for Partial Reconsideration in the above captioned proceeding. The purpose of this petition is to request that the Commission assign fully spaced FM Channel 291A to the community of Bear Lake, Michigan to replace the presently assigned grandfathered short spaced FM Channel 261A occupied by Radio Station WCUZ(FM) and licensed to FBC. The Commission proposed this substitution in the original proceeding, issued an Order to Show Cause to Radio Station WKLA(FM), and WKLA(FM) responded to that Order to Show Cause addressing the Commission's proposed substitution of alternate equivalent FM Channel 254A for the presently assigned FM Channel 292A at Ludington, Michigan as well as the substitution of FM Channel 293A for the vacant and unapplied for FM Channel 255A at Walhalla, Michigan.

The presently assigned FM Channel 261A at Bear Lake, Michigan is a grandfathered short spaced class A facility operating on FM Channel 261A and there is no area in which it can be located in compliance with Section 73.207 of the Commission's Rules as a fully spaced Class A facility. Attached to this Engineering Statement as Exhibit E-1 is an FM Channel Study conducted from the presently licensed site of WCUZ(FM) which shows that the facility is 18.1 km short spaced to Radio Station WGRY(FM), licensed to Grayling, Michigan on first adjacent FM Channel 262C1. This facility effectively eliminates any area in which FM Channel 261A could be located as a fully spaced facility. The substitution of FM Channel 291A for FM Channel 261A will "clean up" the FM Table of Allotments by eliminating one more short spaced grandfathered facility from the Table of Allotments.

The requested assignment of FM Channel 291A can be made at reference coordinates N44-17-37, W86-13-26 as is shown in the attached Exhibit E-2. The Commission has previously issued an Order in MM Docket 01-186¹ where it found that the proposed reference site complied with the Commission's city grade coverage requirements and Exhibit E-2 demonstrates that the assignment can be made in full compliance with the Commissions minimum mileage separation table in Section 73.207 of its Rules. The assignment requires that the existing allotment at Ludington, Michigan on FM Channel 292A be changed to alternate equivalent FM Channel 254A and that the vacant allotment at Walhalla, Michigan on FM Channel 255A be changed to FM Channel 293A. These channel substitutions were considered in the above captioned proceeding and were found to be technically acceptable and the technical data in that proceeding remains accurate for these proposed substitutions. The proposed changes result in a preferential arrangement of the FM Table of Allotments, no community is deprived of an aural service, a preexisting short spaced channel is eliminated and all communities involved receive fully spaced alternate equivalent channel assignments.

¹ See MM Docket 01-186, DA 02-1155, May 17, 2002, footnote 4.

In view of the foregoing, it is respectfully requested that the Commission amend Section 73.202 of its Rules as follows:

Community	Present	Proposed
Bear Lake, Michigan	261A	291A ²
Ludington, Michigan	292A	254A ³
Walhalla, Michigan	255A	293A ⁴

The foregoing statement was prepared by the undersigned personally and is true and correct to the best of this affiant's knowledge. My qualifications are a matter of record before the Commission.

Respectfully Submitted,



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² At reference site specified by the Commission in MM Docket 01-186.

³ As proposed in MM Docket 00-69.

⁴ As proposed in MM Docket 00-69.

Fort Bend Broadcasting Company
1110 West William Cannon Drive
Austin, TX 78745

Petition for Partial Reconsideration
MM Docket 00-69

Exhibit E-1

FM Channel Study
N44-25-18 W86-07-17
FM Channel 261A

Call Sign	State	City	Freq	Channel	ERP	Class	Status	Distance	Sep	Clr
WGRY-FM	MI	GRAYLING	100.3	262	60000	C1	LIC	114.85	133	-18.1
WSHN-FM	MI	HOLTON	100.1	261	3000	A	LIC	106.6	115	-8.4
WKVK	MI	HONOR	100.7	264	4700	A	LIC	36.11	31	5.1
WSHN-FM	MI	HOLTON	100.1	261	2900	A	CP	123.11	115	8.1
	MI	CUSTER	100.5	263	0	A	APP	49.26	31	18.3

All Distances in kilometers

Fort Bend Broadcasting Company
 1110 West William Cannon Drive
 Austin, TX 78745

Petition for Partial Reconsideration
 MM Docket 00-69

Exhibit E-2

FM Channel Study
 N44-17-37 W86-13-26
 FM Channel 291A

Call Sign	State	City	Freq	Channel	ERP	Class	Status	Distance	Sep	Clr	
	MI	BEAR LAKE	106.1	291	0	A	APP	5.34	115	-109.7	
WKLA-FM	MI	LUDINGTON	106.3	292	4900	A	LIC	30.41	72	-41.6	To 254A
WKHQ-FM	MI	CHARLEVOIX	105.9	290	100000	C1	LIC	132.94	133	-0.1	
	MI	WALHALLA	106.5	293	0	A	APP	32.60	31	1.6	
WMIL-FM	WI	WAUKESHA	106.1	291	13000	B	LIC	190.52	178	12.5	
	MI	GLEN ARBOR	105.5	288	0	A	APP	66.47	31	35.5	
WAPL-FM	WI	APPLETON	105.7	289	100000	C	LIC	140.69	95	45.7	
WJZJ	MI	GLEN ARBOR	95.5	238	21000	C2	LIC	61.34	15	46.3	

All Distances in kilometers

CERTIFICATE OF SERVICE

I, Lisa Balzer, a secretary in the law firm of Vinson & Elkins, do hereby certify that I have on this 26th day of June, 2003, caused to be hand-delivered or mailed by first class mail, postage prepaid, copies of the foregoing **"PETITION FOR PARTIAL RECONSIDERATION"** to the following:

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Audio Division
Office of Broadcast License Policy
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

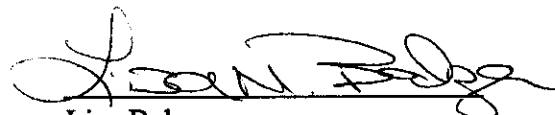
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* Hand Delivered